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10/805,030	03/19/2004	Samuel Thomas Scott III	MS1-1898US	7931
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LEE & HAYES PLLC 421 W RIVERSIDE AVENUE SUITE 500 SPOKANE, WA 99201			EXAMINER STRONCZER, RYAN S	
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

**Application No.**

10/805,030

**Applicant(s)**

SCOTT ET AL.

**Examiner**

Ryan Stronczer

**Art Unit**

4157

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 19 March 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-56 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-56 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 19 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO/5508)  
Paper No(s)/Mail Date 3-19-04  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

**Claims 1, 7, 11, 12, 21, 29-31, 38, 40, 44, 50, and 54 are rejected under 35 U.S.C. 102(b) as being anticipated by Shah-Nazaroff et al. (US Pat. No.: 6,157,377).**

Claim 1 recites a control-based content pricing system comprising, *“a content server configured to distribute media content to a client device in response to a request from the client device to receive the media content, the content server further configured to receive a view control input from the client device that indicates how the media content is to be rendered...”* Shah-Nazaroff teaches a content server **140** which, “automatically coordinates billing for the upgraded media features, and automatically coordinates providing the upgraded media features from broadcast sources **130**” (Col.3, Lines 11-14). Fig. 5 teaches an interactive display by which the user can request program content (e.g., a pay-per-view (PPV) or video on demand (VOD) movie) to be transmitted from the broadcast source to the user’s device. As to the recited, *view control input from the client device that indicates how the media content is to be rendered*, the interactive display taught in Fig. 5 allows the user to indicate the format in which he wishes to receive said content (e.g., if the user wishes to receive said requested content in high-definition) and provides the equivalent functionality of the recited view control input.

Claim 1 further recites, *"...a valuation application configured to allocate a cost to the client device when the media content is distributed, the valuation application further configured to adjust the cost according to the view control input and how the media content is to be rendered."* As discussed above, Fig. 5 teaches an interactive menu which allows the user to order a PPV or VOD program as well as to specify the format in which he wishes to receive said program (e.g., improved resolution, etc). The user is then billed for the cost of the program as well as any additional options (e.g., receiving the program in high-definition) he has selected. This above serves as the claimed valuation application.

Claims 21, 31, and 44 are rejected by Shah-Nazaroff et al. as applied to claim 1.

Claim 7 recites the system of claim 1 wherein, *"the content server is further configured to distribute the media content as a first media stream and, in response to the view control input, distribute the media content as a second media stream to render the media content according the view control input, and wherein the valuation application is further configured to adjust the cost based on the second media stream."* The presence of multiple streams is inherent in a VOD application, such as that taught by Shah-Nazaroff, since activating an interactive or VCR-like function, such as fast-forward or rewind, will cause the user to receive a rewind or fast-forward stream respectively from the distribution point. Insofar as claim 7 recites limitations which are inherent in the system of claim 1, claim 7 is rejected by Shah-Nazaroff as applied to claim 1.

Claims 11, 12, 38, and 40 are rejected by Shah-Nazaroff et al. as applied to claim 7.

Claim 50 is rejected by Shah-Nazaroff et al. as applied to claim 1. The recited, "[o]ne or more computer readable media comprising computer executable instructions..." are inherent in a system which communicates with one or more servers as taught by Shah-Nazaroff.

Claim 54 is rejected by Shah-Nazaroff et al. as applied to claim 50. As to the recited limitation that the receiver be, "*television-based*," Shah-Nazaroff teaches, "...system controller 604 may be a 'set-top' box endowed with the necessary processing power and incorporated with the teachings of the present invention" (Col. 7, Lines 45-48).

Claims 29 and 30 are rejected by Shah-Nazaroff as applied to claim 54.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 2, 9, 10, 22, 27, 28, 32, 37, 39, 48, 49, 52, and 53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah-Nazaroff et al.**

Claim 2 recites the system of claim 1 wherein, "*the content server is further configured to receive the view control input as a command to reduce a resolution of the*

*media content being rendered, and wherein the valuation application is further configured to decrease the cost according to a decrease in bandwidth to distribute a reduced resolution media content to the client device.*" As applied to claim 1 above, Shah-Nazaroff teaches a system in which the user can instruct the system to deliver program content a variety of resolutions, as shown in Fig. 5. In the embodiment taught in Fig. 5, the lowest resolution ("regular") is the default option and the user is charged more money depending on the resolution he wishes to receive (e.g., "good" or "excellent"). It would have been obvious to one of ordinary skill in the art at the time of the invention that a user might wish to have a higher resolution set as the default level and that selecting to receive content at a lower level would result in a decreased charge according to the pricing scheme taught in Fig. 5.

Claims 22 and 32 are rejected by Shah-Nazaroff as applied to claim 2.

Claim 9 recites the system of claim 1 wherein, *"the content server is further configured to receive the view control input as a command to replay a portion of the media content being rendered, and wherein the valuation application is further configured to increase the cost in response to the replay command."* Shah-Nazaroff teaches, "[t]he present invention allows viewers to purchase upgraded media features... upgraded media features include, but are not limited to, a wide variety of audio, video, and interactive effects" (Col. 2, Lines 20-26). Shah-Nazaroff further teaches, "With the upgraded media features, processing server **310** places an order to the respective broadcast source or sources among broadcast sources **130** to have the upgraded media features provided to the viewer at client system **110**" (Col. 4, Lines 21-25).

Examiner takes Official Notice that it is well known in the art for the “interactive features” taught by Shah-Nazaroff in the context of a VOD system to be VCR-like functions such as fast-forward, rewind, pause, replay, etc. It would have been obvious to one of ordinary skill in the art at the time of the invention that the “interactive features” taught by Shah-Nazaroff could include a replay command as claimed and, in implementing the system of Shah-Nazaroff would have provided the benefits of VCR-like operations such as recited in claim 9.

Claims 27, 39, 48, and 53 are rejected by Shah-Nazaroff et al. as applied to claim 9.

Claim 10 recites the system of claim 1 wherein, *“the content server is further configured to receive the view control input as a command to advance the media content being rendered, and wherein the valuation application is further configured to increase the cost in response to the advance command.”* Per applicant’s detailed description, the recited “advance” command is considered to be the equivalent of a “fast-forward, skip ahead, or jump to the next segment command” [0024] and as such is considered to be cumulative with the VCR-like functions addressed above with regard to claim 9.

Claims 28, 37, 49, and 52 are rejected by Shah-Nazaroff et al. as applied to claim 10.

**Claims 3, 5, 6, 17, 19, 20, 23, 24, 26, 33, 35, 45, 47, 51 and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah-Nazaroff et al. as applied**

**to claims 1, 21, 31, 44, and 50, and further in view of Hoffberg et al. (US Pat. No.: 6,400,996).**

Claim 3 recites the method of claim 1 wherein, *"wherein the content server is further configured to distribute an advertisement with the media content, and wherein the valuation application is further configured to adjust the cost based on whether the advertisement is rendered for viewing."* While Shah-Nazaroff teaches the method of claim 1, it does not explicitly teach the subject matter recited in claim 3. Hoffberg teaches a system for distributing video content including the ability for a user to control the content and/or advertising information received. "In this case, the accounting system involves the user's account, and, for example, the recipient may be denied the subsidy from the commercial advertiser, and pay for the privilege of commercial free content" (Col 62, Line 59-63). Thus, Hoffberg teaches that if a user does not wish to view commercial or advertising content associated with content received he has the option of paying an increased fee to avoid such advertisements. As discussed above, Fig. 5 of Shah-Nazaroff teaches an embodiment for ordering multimedia content in which the user is presented with several options associated with the content such a upgrading the video or audio quality or the option to view and record the content, as well as the additional cost associated with each option. In view of Hoffberg's teaching to charge a user an additional fee to receive content without advertisements, it would have been obvious to one of ordinary skill in the art at the time of the invention to add an option to receive the content of Shah-Nazaroff's system with or without advertisements,



and to allocate a cost accordingly, thus providing users with the benefit of being able to view content without commercial interruption.

Claim 5 recites the method of claim 1 wherein, *“the content server is further configured to distribute an advertisement with the media content, and wherein the valuation application is further configured to decrease the cost if the view control input is a command to render the advertisement for viewing.”* As analyzed with respect to claim 3, Hoffberg teaches a system wherein the user can elect to pay a fee to receive content without commercials. The user interface taught in Fig. 5 of Shah-Nazaroff provides the equivalent functionality of the “view control input” as recited in claims 1 and 5 as it allows the user to select multimedia content to be rendered on the user's device. In view of Hoffberg's teaching to charge a user an additional fee to receive content without advertisements, it would have been obvious to one of ordinary skill in the art at the time of the invention to add an option to the interactive menu of Fig. 5 whereby the user could choose to receive the selected content with or without commercials and charge a fee as required.

Claim 6 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 17 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 3.

Claim 19 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 20 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 23 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 24 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 26 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 33 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 35 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 45 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 47 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

Claim 56 is rejected by Shah-Nazaroff and Hoffberg as applied to claim 5.

**Claims 13-15, 41, and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah-Nazaroff et al. as applied to claims 1 and 31 above, and further in view of Eldering et al. (Pub. No.: US 2003/0149975).**

Claim 13 recites the system of claim 1 wherein, *"the content server is further configured to distribute an advertisement with the media content, and log whether the advertisement is rendered for viewing based on the view control input."* Shah-Nazaroff teaches the system of claim 1 but does not explicitly teach the functionality recited in claim 13. Eldering teaches distributing advertising with video content; as to the recited "[logging] whether the advertisement is rendered for viewing," Eldering teaches:

The STB 510 tracks the content and the ads that are viewed. The tracking of ads includes the ads that were received and whether the ads or the alternative ads were viewed...Possible reasons for premature termination may include, but are not limited to, the viewer terminated the session, poor video quality, loss of video from the source, or the media server could not be found. [0111]

As analyzed above, and it would have been obvious to combine the teachings of Eldering and Shah-Nazaroff which would have rendered obvious the subject matter recited in claim 13.

Claim 14 is rejected by Eldering and Shah-Nazaroff as applied to claim 13.

Claim 15 is rejected by Eldering and Shah-Nazaroff as applied to claim 13.

Claim 41 is rejected by Eldering and Shah-Nazaroff as applied to claim 13.

Claim 42 is rejected by Eldering and Shah-Nazaroff as applied to claim 13.

**Claims 4, 18, 25, 34, 46, 55 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah-Nazaroff et al. as applied to claims 1, 17, 21, 31, 44, and 54 above, and further in view of Hoffberg et al. and Eldering et al.**

Claim 4 recites the system of claim 1 wherein, *"the content server is further configured to distribute an advertisement with the media content, and wherein the valuation application is further configured to increase the cost in an event that the view control input is a command to advance past the advertisement such that the advertisement is not rendered for viewing."* The rejection of claims 3 and 5 is incorporated herein. Shah-Nazaroff teaches the system of claim 1 and teaches that the system can be extended to include interactive features such as VCR-like functions, but does not explicitly teach the functionality recited in claim 4. Hoffberg teaches that viewers may elect to pay for the, "privilege of commercial-free viewing." Eldering teaches a method for providing advertising in a VOD environment. Eldering teaches,

The definition of the advertising opportunities may be dictated by the video or may be dictated by the cost model that is selected either by the provider or the subscriber. For example, the cost model may be something along the lines of the less you want to pay for the video the more ads that you are presented with. [0058]

Additionally, Eldering recognizes the likelihood that a user would attempt to skip over or fast-forward through advertising presented in conjunction with a VOD program

and that this decreases or diminishes entirely the value of the advertisement to the advertiser [0110]. To preserve some value for the advertisers, Eldering teaches that the system can recognize when a user activates the skip or fast-forward functions while an advertisement is playing and take action to prevent the user from completely bypassing said commercial. While Eldering's system will either disable fast-forwarding during commercials or present an alternative advertisement, it would have been obvious to one of ordinary skill at the time of the invention to combine Eldering's method of recognizing when a user attempts to skip advertisements in a VOD program with the pricing scheme and cost structure taught by both Eldering and Hoffberg in modifying the system of Shah-Nazaroff which responds to a user's attempt to skip said advertisements by charging a fee for doing so. This would provide the user the benefit of not having to watch the commercials while allowing the distributor or the advertiser to recoup the value of the ads that are not displayed to the user.

Claim 18 is rejected by Eldering and Shah-Nazaroff as applied to claim 4.

Claim 25 is rejected by Eldering and Shah-Nazaroff as applied to claim 4.

Claim 34 is rejected by Eldering and Shah-Nazaroff as applied to claim 4.

Claim 46 is rejected by Eldering and Shah-Nazaroff as applied to claim 4.

Claim 55 is rejected by Eldering and Shah-Nazaroff as applied to claim 4.

**Claims 8 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah-Nazaroff et al. as applied to claim 1 and 31 above, and further in view of Stuckman et al. (Pub. No.: 2004/0111756).**

Claim 8 recites the method of claim 1 wherein, *"wherein the content server is further configured to receive the view control input as a command to end distribution of the media content to the client device, and wherein the valuation application is further configured to decrease the cost in response to a distribution end of the media content."* As discussed above, Shah-Nazaroff teaches the method of claim 1, it does not teach the functionality recited in claim 8. Stuckman teaches a system of distributing video to a subscriber wherein the cost charged to the viewer is dependent on the amount of the program watched by the viewer. "Further, the user may be billed based on how much of the video programs are viewed...The user may be billed for the Discovery Kids' show commensurate with three minutes of viewing time in contrast to viewing the whole show" [0087]. It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the billing method taught by Stuckman into the content distribution system taught by Shah-Nazaroff to provide users of Shah-Nazaroff's system the benefit of only having to pay for content actually viewed rather than for an entire program.

Claim 36 is rejected by Shah-Nazaroff further in view of Stuckman as applied to claim 8.

**Claims 16 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shah-Nazaroff et al. as applied to claims 1 and 31 above, and further in view of Yui et al. (US Pat. No.: 6,972,680).**

Claim 16 recites the system of claim 1 wherein, *"the content server is further configured to: distribute the media content as a first media stream; receive the view control input as a command to pause distribution of the media content to the client device; receive a second view control input from a second client device to resume distribution of the media content from a point at which the media content was paused; distribute the media content as a second media stream to the second client device; and wherein the valuation application is further configured to increase the cost based on the second media stream."* The rejection of claim 9 is incorporated herein. Shah-Nazaroff teaches that the user can pay for "interactive features" (Col. 2, Lines 25-26) which, in the context of a VOD system, can include pausing a program but does not explicitly teach that the user can pause a program and resume watching said program on a different client device, as recited in claim 16. Fig. 1 of Yui teaches a system in which a user viewing a broadcast television program in one location can move to another location and resume viewing that same program with "time shifted viewing" enabled [ABST]. Yui teaches the functionality recited in claim 16 and it would have been obvious to one of ordinary skill in the art at the time of the invention to combine the system of Shah-Nazaroff with the capability of beginning to watch a program in one location and being able to resume watching said program in another location, as taught by Yui. Such functionality would have been desirable as users often might wish to be

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able to start watching a program in one location (e.g., the living room of their house) and resume and/or finish watching that program in another location (e.g., their bedroom).

Claim 43 is rejected by Shah-Nazaroff and Yui as applied to claim 16.

***Contact***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan Stronczer whose telephone number is (571) 270-3756. The examiner can normally be reached on 7:30 AM - 5:00 PM, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vu Le can be reached on (571) 272-7332. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Ryan Stronczer/  
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